

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

NICHOLAS J. QUEEN

§

VS.

§

CIVIL ACTION NO. 1:07cv21

JOHN FOX

§

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner Nicholas J. Queen, an inmate confined at the Federal Correctional Complex, proceeding *pro se*, brought this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The court referred this matter to the Honorable Earl S. Hines, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends the petition be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes petitioner's objections should be overruled.

Petitioner argues waiver of jurisdiction. However, waiver does not exist here because federal authorities continuously showed an interest in petitioner, unlike the petitioner in *Shields v. Beto*, 370 F.2d 1003 (5th Cir. 1967), upon which petitioner relies. Further, petitioner has not been forced to serve his sentence in a piecemeal fashion as he asserts. The rule against

piecemeal incarceration only prohibits extending the total time of incarceration. *See Free v. Miles*, 333 F.3d 550, 555 (5th Cir. 2003). As the magistrate judge correctly concluded, petitioner's total time of incarceration has not been increased. Thus, this petition should be denied.

O R D E R

Accordingly, Petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

So **ORDERED** and **SIGNED** this **30** day of **November, 2009**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge